

## **Applied Behavior Analysis Provider Workgroup Meeting #3**

Meeting Minutes

RedRossa 10:00 am – 1:30 pm

21 October 2015

### **Attendance**

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#### *Present:*

Sarah Aker, Pierre, Department of Social Services (DSS)  
Dr. Paul Amundson, Sioux Falls, Health insurance representative  
Rep. Julie Bartling, Burke, Legislator  
Mike Demand, Des Moines, Iowa, Health insurance representative  
Sen. Terri Haverly, Rapid City, Legislator  
Rep. Tom Holmes, Sioux Falls, Legislator  
Sec. Marcia Hultman, Pierre, Department of Labor and Regulation (DLR)  
Vicki Isler, Sioux Falls, Provider of autism services  
Ann Larsen, Pierre, Department of Education (DOE)  
Sen. Jeff Monroe, Pierre, Legislator  
Pamela Osnes, Burke, Provider of autism services  
Sec. Gloria Pearson, Pierre-Yankton, Department of Human Services (DHS), Workgroup chair  
Michelle Powers, Brookings, Parent/family  
Brittany Schmidt, Sioux Falls, Provider of other services to children with autism  
Lisa Stanley, Pierre, Parent/family  
Carol Tellinghuisen, Spearfish, Licensing board executive

#### *Also attending:*

Patrick Baker, DHS  
Mallori Barnett, DLR  
Carole Boos, DHS  
Angie Brown, LifeScape vice president  
Jason Dybsetter, Behavior analyst, LifeScape  
Kitty Kinsman, Lobbyist, LifeScape  
Lacy Knutson, Board certified behavior analyst  
Dr. Trisha Miller, S.D. Psychological Association  
Randy Moses, Avera Health Plans  
Jason Simmons, Legislative Research Council  
Kelsey Smith, Office of the Governor  
Linda Turner, DOE  
Joey Younie, DHS

Sec. Pearson opened the meeting and welcomed the members at 10:02 am. She reviewed the purpose of the workgroup and the points of consensus reached by the members.

## Introduction

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The purpose of the workgroup is to study the certification and licensure of applied behavior analysis therapy providers and to advise and make recommendations to the Governor and the Legislature by December 1, 2015. It is in the state's interest to protect the public, which licensure and certification achieves. The group will discuss a recommendation for licensure of applied behavior analysis (ABA) providers.

## Agenda

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- Welcome back, overview, and review of notes of last meeting
- Discussion draft of possible statute
- Board of Psychologist Examiners
- Theming session on discussion draft
- Propose recommendations
- Next steps

## Review

Sec. Pearson thanked all the members of the workgroup for participation so far. The time and interest by everyone is appreciated. She stated that today the group would be finalizing its recommendations to the Legislature so we can report back by December 1 about what we recommend for certification and licensure of providers of applied behavior analysis (ABA) services. Previously agreed upon licensure options to be considered for ABA providers included an independent board, attachment to a state agency, or joining an existing board.

There was consensus that we do want licensure and certification of ABA providers in South Dakota, and we also agreed the national Behavior Analyst Certification Board is the foundation for ABA providers. Then it was discussed whether we want a new licensure board or to operate under an existing board. It was decided that operation under an existing state board would be the best. When determining which board, it was decided that the S.D. Board of Psychologist Examiners may be the best fit. Carol Tellinghuisen encouraged their members' attendance at workgroup meetings. Tellinghuisen told the Board of Psychologist Examiners of the workgroup's decision the day after the second ABA Provider Workgroup meeting. An ABA Provider Workgroup subgroup drafted proposed statutory changes, but after several meetings, the Board of Psychologist Examiners voted to not accept ABA providers. Sec. Pearson said this is not where we expected to be today, but will now revisit our board options. That brings us to where we are now.

Pearson asked Carole Boos to report on the subgroup's activities regarding statute revision.

**Boos, staff attorney for the Department of Human Services:** Thanked the subcommittee members – Tellinghuisen, Osnes, and Isler – for their work and effort in the development of the discussion-draft legislation. The subcommittee provided the workgroup committee members with a discussion

draft of legislation that proposed changes to SDCL Chapter 36-27A, Psychologist Examiners. Although the specific statutory language will not be used, the drafting memorialized several parameters that will be useful when the next discussion draft is prepared: 1) the statutory language in the state legislation adopted in the 2015 legislation session and codified at SDCL 58-15-159 should provide the framework for the licensure; 2) code of ethics language should be clarified and either required or authority given the licensing board to adopt a code applicable to the behavior analysts; 3) paraprofessionals should be subject to the same criminal background check and fingerprinting requirements, as currently being used by school employees, licensed behavior analysts who supervise the paraprofessionals should pay for the cost of the criminal background check and fingerprinting and paraprofessionals who have been convicted of crimes of violence, sexual offenses and drug related crimes are prohibited from the practice ; 4) behavior analysts should be held to the “crimes of moral turpitude” standard ; and 5) the proposed administrative rules to implement the statute should be a part of the legislative package.

**Trish Miller, a member representative representing the South Dakota Psychological Association (SDPA):** Provided insight on the Board of Psychologist Examiners’ recommendation to reject ABA providers. She clarified the difference between the licensing board and the association. The association supports licensing professionals in the state. The board has a variety of reservations including financial implications and the timing to review the proposed statutory changes (not practical to complete by December 1), as well as lack of psychologist representation at the ABA workgroup meetings. The Board of Psychologist Examiners voted not to add ABA providers to their licensure responsibility. However, it was noted the American Psychological Association recommends ABA be placed under state psychology boards. SDPA has *logistical* concerns, but not *philosophical* concerns. The SDPA is concerned with resources to appropriately regulate ABA licensure. The SDPA represents approximately 30% of the psychologists in South Dakota. All psychologists are licensed by the Board of Psychologist Examiners.

The Board of Psychologist Examiners has met four times since the workgroup’s recommendation that it was the most logical fit. Board members were invited to two of the three ABA Provider Workgroup meetings, but were unable to come, and not all board members were present for the subsequent meetings.

The premise was that the national Behavior Analyst Certification Board (BACB) would handle competency, examinations, training requirements, etc., and rely on the BACB board certification. The state would conduct background checks. The Board of Psych. Examiners wanted to require an additional examination, which the ABA providers were OK with but concerned with financial sustainability.

The group discussed the draft legislation and provided recommended edits. There was agreement that the language is beneficial and mutually agreed upon, regardless of placement under a particular board. The draft legislation will be used moving forward. It was recommended to include a universal-practice exception, which would streamline the application process for those who

provide services out of the state they live in. There are different cost-sharing responsibilities for the individual receiving services if they are outside of the insurance network.

ABA therapy is not a federally mandated Medicaid benefit, but is one of many services states may choose to cover for children with autism spectrum disorders. South Dakota Medicaid covers ABA therapy for children under age 21 with a prior authorization.

Insurance plans frequently require providers to be credentialed. Some plans do not allow unlicensed providers to become credentialed. Professional oversight is necessary, and licensure is a link between credentialing and certification. The group agrees the national board certification is adequate, but it is not licensure under a state board or state law. Without licensure, third-party reimbursement can be uncertain (in Iowa, for example, licensure is required for reimbursement). The mandate pays for direct service delivery by a master's level or doctoral level ABA provider. This does not include technicians or bachelor's level providers at this time.

### Options

The lowest operating budget for a board in South Dakota is over \$21,000, which does not include start-up costs. A Kentucky example with an operating budget of \$4,000 did not include the staff support paid by the state of Kentucky. The group agreed the financial resources are not available for an independent board. Other options might include the Board of Social Work Examiners. There is a South Dakota example of a licensing board with an advisory subcommittee operating under the standing board. A question was asked regarding the feasibility of working with the Board of Psychologist Examiners, and it was clarified the board voted unanimously to *not* accept the responsibility of licensure of ABA providers, but to support licensure elsewhere.

A recommendation was made to license under an existing board with a subcommittee of board-certified behavior analysts appointed by the Governor as well as a lay member. The number of providers was not agreed upon, but the discussion centered on a five-member subcommittee with three-year terms. The Board of Social Worker Examiners and other options were discussed. An offer was made by LifeScope representatives that some of its staff members would assist with development.

**The group agreed to recommend licensure, and we should pursue operation under an existing board in the form of a subcommittee. The background work and legislative discussion draft will be useful moving forward.**

Due to recent developments with the Board of Psychologist Examiners, this group could review revised draft legislation via email when a standing board is determined. The deadline for a recommendation is December 1. Legislation can be introduced in January or February, so there is time to determine the standing board and find an agreeable arrangement.

The group discussed the subcommittee model used by the Board of Counselor Examiners with Marriage and Family Therapists. This model had five members appointed by the Governor with one being a lay member, three-year terms, and served to advise the Board of Counselor Examiners on fees, licensure, ethics, background checks, etc.

Workgroup members worked through an exercise of identifying the pros and cons of operation under an existing board with an advisory committee structure. Participating stakeholders formed smaller groups for the exercise based on areas of interest – families, insurance, providers, state, and legislators – and the following trends emerged:

- **Licensure is necessary** – Groups cited the importance of licensure as a tool to provide oversight of applied behavior analysis (ABA) to protect the public as well as protect the integrity of the field and promote growth of the profession. Also cited was the benefit of licensure as a means to insurance reimbursement and, consequently, provision of services to more clients.
- **Advisory committee to serve under existing licensing board** – Groups saw benefit in sharing costs and administrative overhead with an existing licensing board already recognized in statute. Groups also mentioned being able to build on an existing structure with some autonomy, the advisory committee being able to offer ABA expertise to the standing board, and the potential to establish a separate board in the future as pros. Legislators supported the plan to operate under an existing board, but were open to a plan to seek legislative authority and funding for an independent board if needed. Cons mentioned included the need to find the right board, whose members may not be knowledgeable about ABA, along with lack of official representation of behavior analysts on the standing board and unknown costs of operation.

#### Next steps

**The group discussed possibilities for recommendations:**

**Continue discussions with current boards, as the most sustainable situation at this time would be operating under an existing board. Legislators are willing to consider asking for an appropriation to assist with start-up costs if necessary.**

**Regarding licensure, this only applies to the master's and doctoral level providers, which is currently in statute.**

Carol Tellinghuisen and Gloria Pearson will **approach the Board of Social Work Examiners**. If there is a need for a conference call in the future, it will be arranged. Pearson thanked everyone for their efforts and for attending the meeting.